

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

1201 NORTH MARKET STREET
P.O. BOX 1347
WILMINGTON, DELAWARE 19899-1347

(302) 658-9200
(302) 658-3989 FAX

DEREK J. FAHNESTOCK
302 351-9347
dfahnestock@morrisnichols.com

March 16, 2023

The Honorable Christopher J. Burke
J. Caleb Boggs Federal Building
U.S. District Court for the District of Delaware
844 North King Street
Wilmington, DE 19801

VIA ELECTRONIC FILING
and HAND DELIVERY

Re: Bausch & Lomb Incorporated, et al. v. SBH Holdings, LLC,
C.A. No. 20-1463 (GBW) (CJB)

Dear Judge Burke:

We write on behalf of Plaintiffs regarding Defendant's refusal to comply with the Court's Oral Order of March 9, 2023. That Order stated that "no later than March 15, 2023, Defendant shall submit to Plaintiff its proposed constructions for 'comprising on a daily dosage basis' and 'administering a daily dosage' (as opposed to statements about when infringement occurs, which is what is currently included in the JCCC)". That March 15 deadline passed with no such disclosure—nor indeed any communication of any kind—from Defendant. Plaintiffs e-mailed Defendant's counsel this morning regarding this issue (Ex. A, e-mail thread at 1), reminding them of the Court's Order and requesting confirmation that Defendant was no longer challenging Plaintiffs' constructions of those terms. In response, Defendant's counsel stated, in total, "we stand by our proposed language and had and have nothing to add." (*Id.*). Given Defendant's open refusal to comply with the Court's Order and the fact that Plaintiffs' opening claim construction brief is due Tuesday, March 21, Plaintiffs request that Defendant be deemed to have waived its right to propose constructions for the two subject terms, and that Plaintiffs' constructions be adopted for those terms.

Respectfully,

/s/ Derek J. Fahnestock

Derek J. Fahnestock (#4705)

DJF/rah
Enclosure

cc: All Counsel of Record (via CM/ECF and e-mail)